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NORFOLK SOUTHERN R. CO. *v.* NORFOLK TRUCKER'S EX-
CHANGE, Inc.

March 16, 1916. Rehearing Denied April 3, 1916.

[88 S. E. 318.]

1. Carriers (§ 76*)—Carriage of Goods—Custody and Control of Shipment.—A consignor, who has made a special contract with a carrier to transport goods, may maintain an action against the carrier for failure to deliver them within a reasonable time, or for their loss or injury, even where title passed to the consignee at delivery of the goods to the carrier.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 256-271, 263; Dec. Dig. § 76.* 2 Va.-W. Va. Enc. Dig. 713.]

2. Depositions (§ 88*)—Admissibility in Evidence—Designation of Court.—Where a notice to take depositions correctly referred to the circuit court as that in which the litigation was pending, the error in the caption of the depositions in naming the corporation court does not render the depositions inadmissible.

[Ed. Note.—For other cases, see Depositions, Cent. Dig. §§ 234-236½, 242-245; Dec. Dig. § 88.* 4 Va.-W. Va. Enc. Dig. 559.]

3. Carriers (§ 106*)—Carriage of Goods—Actions—Instructions.—Where the declaration of a consignor of goods against the carrier alleged negligent delay, negligent icing, and packing in an improper car, instructions that if there was negligence on the defendant in delivering the goods, the burden of showing that the damage was due to the delay in transportation is upon defendant; that defendant is not only responsible for any breach of its duty as common carrier upon its own line, but is responsible for breach of duty by any of the connecting carriers as well and for negligence or unreasonable delay on its part or any of its connecting carriers—authorized the jury to consider only acts of negligence that might be brought directly within the declaration, or such as were consequently thereon, and did not leave the whole matter of negligence or breach of duty as common carrier to the jury, though not within the declaration.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 448-450; Dec. Dig. § 106.* 2 Va.-W. Va. Enc. Dig. 716.]

4. Trial (§ 194 (8)*)—Instructions—Applicability to Evidence.—Though any opinion by the court as to the weight, effect, or sufficiency of the evidence submitted to the jury, or any assumption of a fact as proved, is an invasion of the province of the jury, it is proper when there is no evidence on an issue to so state to the jury.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 454; Dec. Dig. § 194 (8).* 7 Va.-W. Va. Enc. Dig. 733.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Carriers (§ 76*)—Carriage of Goods—Custody and Control—“Lawful Holder.”—The Carmack Amendment (Act June 29, 1906, c. 3591, § 7, pars. 11, 12, 34 Stat. 593 [U. S. Comp. St. 1913, 8592]), providing that any common carrier receiving property for transportation from a point in one state to a point in another shall be liable to the “lawful holder” of the bill of lading authorizes a recovery by the person beneficially interested in the shipment, though he may not be in possession of the bill of lading.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 256-271, 353; Dec. Dig. § 76.* 2 Va.-W. Va. Enc. Dig. 715.]

For other definitions, see Words and Phrases, Lawful Holder.]

6. Carriers (§ 106*)—Carriage of Goods—Actions—Instructions.—In an action for negligent delay in shipment of spinach, instruction that, if on a trip as long as the one in question the shipper in the exercise of reasonable care would have put more ice in the car, or used a refrigerator car, or ordered re-icing, and his failure to use a refrigerator car or to order re-icing contributed to the loss, the jury must find for defendant was properly refused, where the evidence shows that a refrigerator car is not used for the transportation of spinach, since it should be kept moist as well as cool, and it is the ice water trickling down through the barrels that preserves its freshness.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 448-450; Dec. Dig. § 106.* 2 Va.-W. Va. Enc. Dig. 716.]

Error to Circuit Court of City of Norfolk.

Action by the Norfolk Truckers' Exchange, Incorporated, against the Norfolk Southern Railroad Company. Judgment for plaintiff, and defendant brings error. Reversed, and remanded for new trial.

James G. Martin, of Norfolk, for plaintiff in error.

J. Edward Cole, of Norfolk, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.